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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-989

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In Regard to the Matter of:  
Bayside State Prison  
Litigation

JOSEPH SMITH,

-vs-

WILLIAM H. FAUVER, et al.,

Defendants.

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\* \* \* \*

MONDAY JUNE 16, 2008

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, TNC.  
Certified Court Reporting & Videoconferencing  
251 South White Horse Pike  
Audubon, New Jersey 08106  
856-546-1100

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6 Transcript of proceedings in the above

7 matter taken by Theresa O. Mastroianni, Certified

8 Court Reporter, license number 30X100085700, and

9 Notary Public of the State of New Jersey at the

10 United States District Court House, One Gerry Plaza,

11 Camden, New Jersey, 08102, commencing at 1:43 PM.

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3 A P P E A R A N C E S:

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5 LOUGHRY & LINDSAY, ESQUIRES

6 BY: LAWRENCE W. LINDSAY, ESQUIRE

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8 CAMDEN, NEW JERSEY 08102

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14 BY: JAMES LAZZARO, ESQUIRE

15 - and -

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18 HAMILTON SQUARE, NEW JERSEY 08690

19 609-586-2257

20 ATTORNEYS FOR THE DEFENDANTS

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1                   JUDGE BISSELL: I next direct my  
2 attention and render a decision or recommendation in  
3 the case of Joseph Smith docket number 08-989. The  
4 following constitutes the Special Master's  
5 determination regarding the complaint of Joseph  
6 Smith.

7                   This opinion/report is being issued  
8 pursuant to the directives of the Order of Reference  
9 to a Special Master and the Special Master's  
10 Agreement and the guiding principles of law which  
11 underlie this decision to be applied to the facts  
12 upon which it is based as set forth in the jury  
13 instructions in the Walker and Mejias jury charges to  
14 the extent applicable to the allegations in Mr.  
15 Smith's case.

16                   As finalized after review under Local  
17 Civil Rule 52.1, the transcript of this oral opinion  
18 will constitute the written report required by  
19 paragraph seven of the Order of Reference to a  
20 Special Master.

21                   Joseph Smith resided in Trailer Number  
22 Three on the dates in question to wit on or about  
23 July 30th and August 2, 1997. I'll be reading  
24 selected excerpts from the transcript.

25                   Joseph Smith was in a cubicle in

1      Trailer Number Three. That placed him on the bottom  
2      bunk accordingly and rather necessarily quite close  
3      to the floor. He referred to an encounter with SOG  
4      officers on August 2, 1997. Some of the questions  
5      and answers are as follows beginning with page 162:

6                "I want to ask you, how many SOG  
7      officers came into your cubicle?

8                Maybe one or two.

9                Did they give you any instructions when  
10     they came into your cubicle?

11               No, they were screaming, keep your  
12     faces in your pillows.

13               They didn't tell you to get up?

14               Nope.

15               And how did you -- how did you get out  
16     of bed?

17               I was drug out of bed.

18               What do you mean drug out of bed?

19               They just grabbed me by the back of my  
20     shirt and pants and threw me on the floor.

21               Were you injured as a result of being  
22     pulled out of bed?

23               No.

24               And then I think you were saying that  
25     all of the prisoners in the cubicles, same thing

1 happened to them?

2                   Yeah, they just piled on top of each  
3 other. They just drug you off and threw you in the  
4 pile and pulled you off of each other. They would  
5 handcuff the guy and I could feel people coming off  
6 of me because I could breathe better."

7                   He was at the bottom of the pile.

8                   He was marched out of his cubicle and  
9 down the hallway of the trailer where his wing  
10 existed. This was a narrow hallway and he was  
11 alternately rammed into the outside of the wall of  
12 the hallway and bounced back and forth from the wall  
13 by a line of SOG officers who hit him.

14                  Unlike testimony I've heard from other  
15 plaintiffs here which I have or will find incredible,  
16 in the case of Mr. Smith, I find his testimony is  
17 accurate in that as he describes it there was room  
18 for only one line of SOG officers in this hallway to  
19 allow the passage of the prisoners. And this space,  
20 approximately 42 inches or so in size, was  
21 obviously -- could not have supported essentially  
22 three abreast, but I do find that it did support a  
23 line of SOG officers along one side and that he was  
24 hit and struck. He was hit and struck on the way  
25 down including a hit in the face and a blow to his

1 left eye which raised blood. As he described it:

2 "Where exactly were you hit as you went  
3 down this line from his cubicle to the central area  
4 of the trailer?

5 Answer: In my left eye. He hit me and  
6 like caught me in the side of the nose at the same  
7 time.

8 Okay. Just one blow?

9 Yes.

10 Did you begin to bleed at all?

11 Yes.

12 What happened?

13 They kept beating me down to the end of  
14 the line and when I got to the end of the line I was  
15 pulled out because I was bleeding all over.

16 Who pulled you out?

17 I don't know, one of the SOG guys,  
18 officers.

19 Did they say something to you?

20 Yeah, they said they had a bleeder so  
21 they escorted me down to the infirmary. He had two  
22 of his other SOG officers escort me down."

23 Questioning resumes on page 166. "Now,  
24 on your way, can you tell me about the escort to the  
25 infirmary?"

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1                  Yeah, they took me out of the trailer  
2    and one officer was on my right side, you know, my  
3    arm. The officer on my left side put his up between  
4    the handcuffs and me with a stick and as we walked to  
5    the infirmary he kept hitting me in the back of the  
6    head. I mean it wasn't that hard but he kept hitting  
7    me in the head. He kept telling me I fell off the  
8    bunk and that's how I hurt my eye.

9                  What did you say to him?

10                 Oh, I wasn't arguing with him."

11                 So they get to the infirmary and he  
12   followed the directions of his officer on the way.  
13   Beginning at page 169: Did the officers escort you  
14   to the infirmary?

15                 Yes.

16                 Did you have any kind of conversation  
17   with the nurse?

18                 No, not that I can remember. She  
19   told -- I told them -- I told her what they told me  
20   to tell her but I didn't talk to her.

21                 What did you say to her?

22                 That I slipped out of my bed.

23                 Which was a lie?

24                 Yes.

25                 And the reason you told her you slipped

1 out of your bed instead of telling her the truth?

2 Answer: Because they said I would get  
3 worse."

4 I find that testimony to be credible  
5 and accurate.

6 Now, one might obviously have -- give  
7 some pause and think, well, maybe he really did fall  
8 out of bed and he's making this up. But let's  
9 remember, he was in a bottom bunk. He was a couple  
10 feet maybe at most from the floor. It's not a  
11 situation where it would be credible that he would,  
12 in fact, fall or slip getting out of his bunk. He  
13 wasn't descending from the top bunk either with or  
14 without the assistance of any ladder and he emerged  
15 from this encounter with two black eyes, a bloody  
16 nose, an eye almost swollen shut and a cut. And  
17 among other things eventually began spitting up blood  
18 and had to return to the infirmary. I'll get to that  
19 in a minute. So it's just not credible that these  
20 sorts of injuries occurred because he slipped and  
21 fell getting out of his lower bunk. And under the  
22 circumstances, his testimony is by far the more  
23 credible and obviously has a ring of truth and sense  
24 to it. One would expect that if, despite well-placed  
25 blows, they wound up with a bleeder, then there was

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1 going to have to be a cover story which, of course,  
2 the SOGs could enforce with the type of threats that  
3 ensued in this case.

4 As I noted a moment ago, later that day  
5 Mr. Smith went back to the infirmary a second time  
6 and then back again at night because he was spitting  
7 up blood that was draining from his bloody nose.

8 I find that Mr. Smith's testimony in  
9 this regard and with regard to this incident is  
10 credible and accurate. I've assessed and about to  
11 assess the quantum of his damages. Once again, these  
12 were the result of very inappropriate conduct.  
13 However, the injuries were of short duration,  
14 although serious and potentially dangerous,  
15 particularly the area in which he was hit.

16 I make a finding here that this conduct  
17 is actionable. Once again, however, because it was  
18 at least brief and transitory in nature and Mr. Smith  
19 was not the subject of repeated beatings, that,  
20 although the conduct involved here did involve  
21 excessive force, as defined by the jury instructions,  
22 although actionable, I do not find it so egregious  
23 and of such duration as to support an order of  
24 punitive damages under application legal standards.

25 Finally, although not every item of

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1 evidence has been discussed in this opinion/report,  
2 all evidence presented to the Special Master was  
3 reviewed and considered.

4 To reiterate, I find that the injury  
5 inflicted here was actionable. I find that the  
6 injury was acute initially, but of short duration and  
7 without the infliction of any significant continuing  
8 pain or significant restriction on Mr. Smith's  
9 activities.

10 Accordingly, I recommend in this report  
11 that the district court enter an award of  
12 compensatory damages in the amount of five thousand  
13 dollars in Mr. Smith's favor.

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1 C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and  
4 Certified Shorthand Reporter of the State of New  
5 Jersey, do hereby certify that the foregoing is a  
6 true and accurate transcript of the testimony as  
7 taken stenographically by and before me at the time,  
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a  
10 relative nor employee nor attorney nor counsel of any  
11 of the parties to this action, and that I am neither  
12 a relative nor employee of such attorney or counsel,  
13 and that I am not financially interested in the  
14 action.

15

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19

J.O. Mastroianni

Theresa O. Mastroianni, C.S.R.  
20 Notary Public, State of New Jersey

My Commission Expires May 5, 2010  
21 Certificate No. X10857

Date: June 17, 2008

22

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25

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